

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 46 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LEGAL HEIRS OF DECEASED

VIPULKUMAR MANEKLAL JAISWAL

Versus

STATE BANK OF SAURASHTRA

Appearance:

MR. P.J.KANABA Advocate for Petitioners

MR A.S. VAKIL for Respondent No. 1

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 04/04/96

ORAL JUDGEMENT

Rule. Mr. A.S.Vakil waives service of the Rule on behalf of the respondent Bank.

In the facts of the case, civil revision application is finally heard today.

By this revision application under Sec.115 of the Code of Civil Procedure, the petitioners, who are original defendants and judgment debtors, have challenged

the legality and validity of the order dt. 18th December, 1995 passed by the learned Civil Judge (S.D.), Amreli in Special Execution Petition No. 44 of 1993. By the impugned order, the learned Judge of the Executing Court ordered to issue necessary warrant for recovery of Rs.1,18,401-22 Ps. as per decree passed on 4th November, 1991. The learned Judge of the Executing Court has stated, inter alia, in the impugned order that the petitioners/judgment debtors have been served with the notice of the execution proceedings and despite grant of adequate time for filing objections and/or reply, the petitioners did not file any reply and the application for adjournment at Ex.44 came to be rejected and as such the execution proceedings should be proceeded with further by issuance of warrant for recovery of the decretal amount.

Mr. P.J.Kanabana, learned advocate appearing for the petitioners, has contended that the petitioners have, in fact, filed the objections to the execution proceedings on 14th March, 1995. And the Court passed order below it on 28th March, 1995, fixing it for hearing and reply. It is, therefore, not correct to say that the petitioners have not filed any reply as stated in the impugned order. It is thus clear that the learned Judge of the Executing Court, while passing the impugned order, has brushed aside the important material on record, inasmuch as the objections filed on behalf of the petitioners/judgment debtors, were pending for hearing and no hearing with regard thereto, had taken place. Yet, the learned Judge of the Executing Court has passed the order ignoring the objections filed on behalf of the petitioners. Under the circumstances, the revision deserves to be allowed.

In the result, the application succeeds. The impugned order dt. 18th December, 1995 passed by the learned Civil Judge (S.D.), Amreli in Special Execution Application No.44 of 1993 is hereby quashed and set aside. The matter is remanded back to the trial court for hearing of the aforesaid objections of the petitioners on merits and in accordance with law. Rule is accordingly made absolute. No costs.
